

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 163 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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STATE OF GUJARAT

Versus

JASHBHAI LALLUBHAI PARMAR  
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Appearance:

Mr.A.J. Desai, APP for Petitioner  
MR JITENDRA MALKAN for Respondent No. 1  
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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/03/98

ORAL JUDGEMENT

Heard learned APP Shri A.J. Desai for the petitioner and learned Advocate Shri Jitendra Malkan for respondent. Rule. Learned Adocate Shri Jitendra Malkan waives service of Rule. By consent of the learned advocates appearing for the parties, the matter is finally heard.

2. Being aggrieved and dissatisfied by the order passed by the learned Additional Sessions Judge, Baroda, dated 10.2.1998 in the proceedings of Revision Application No.25 of 1998, the State of Gujarat has preferred the present Special Criminal Application.

3. That vide impugned order, the learned Additional Sessions Judge has rejected the Revision Application filed by the present petitioner - State of Gujarat against the order of learned JMFC, Padra, District Baroda dated 21.1.1998 in the matter or Remand Application moved by Investigating Officer in respect to Crime Register No. 8 of 1998, for the offences made punishable under Sections 406, 409, 420, 467, 478 and 120B of IPC.

4. That the Padra Branch of State Bank lodged a FIR before Police Inspector, Padra Police Station, District Baroda on 17.1.1998 in respect to defalcation of approximately Rs.4.50 crores. That the complaint was filed against present respondent Jashbhai Lalubhai Parmar, who at a relevant time was serving as Accountant in Padra Branch of State Bank of India and two other accused - one Sanjay Mansukhbhai Parmar, who happens to be the nephew and one Ravindra Bhoyate. That petitioner was arrested on 13th January, 1998 and on production before the learned Magistrate on 14th January, 1998, petitioner was remanded to police custody upto 16th January, 1998. That thereafter further remand was granted till 21st January, 1998. That Investigation Agency claimed further remand on 21st January, 1998 vide Application - Annexure B produced at running page 15 to 18, which is rejected by the learned J.M.F.C.

5. Learned APP Shri A.J. Desai has contended that as averred in the application of the Investigating Officer, the respondent being an Accountant at a relevant time was entrusted with two cheques for an aggregate amount of Rs. 4.5 crores. That as per the FIR, said two cheques were deposited in different accounts opened in the name of M/s M.K. Industries and Samir Industries and thereafter by different cheques and drafts, the amount have been withdrawn from the said account by different persons. That during the initial remand of present respondent, the police has received information and for verification of some of the facts, remand was necessary. That the police has claimed that during the raid carried out at the residential premises of accused No.3 - Sanjay Mansukhbhai Parmar, some letters and xerox copies of cheques were recovered. That how such cheques and

letters of State Bank of India have reached to Sanjay Mansukhbhai Parmar, who happens to be the nephew of the present respondent, interrogation of respondent is necessary. Furthermore, present respondent being an Accountant, is aware of the fact that different persons have withdrawn different amount appearing personally at the bank from the account of M/s M.K. Industries. That in order to identify such different persons, the interrogation of respondent is necessary. That the respondent as Accountant has issued cheque books to the account holder of M/s Samir Industries and M.K. Industries thereby the respondent is knowing the persons to whom such cheques have been issued and in order to identify such persons, interrogation is necessary. It is also submitted that offence has been committed by the accused pursuant to a conspiracy with different persons, and as such, to thoroughly investigate the said offence, further remand being necessary.

6. Shri Desai, learned APP has taken me through the impugned order passed by the learned Additional Sessions Judge and learned J.M.F.C., which are produced on record vide running page 21 to 30 and 18 to 21 respectively.

7. Shri Jitendra Malkan, learned advocate appearing on behalf of the respondents has heavily relied on para 6 of the impugned order and has urged that present respondent has been remanded to police custody in all for nine days and learned Additional Sessions Judge has verified the facts from police diary and has passed a reasoned order stated the fact that whatever facts were known to the present respondent have been disclosed to the Investigating Officer during the investigation and nothing has remained, no further remand could be granted.

8. I have carefully gone through impugned orders of learned Additional Sessions Judge as well as order of learned JMFC. In my opinion, considering the nature and gravity of the offence charged against the accused and the fact that accused being an Accountant who could identify or disclose the persons to whom the cheques of M/s M.K. Industries and M/s Samir Industries were issued and who had withdrawn the money from the said account. That such information could be collected only by custodial interrogation. It is true that initially the trial court has granted remand of nine days of the present accused and as per the settled proposition of law, remand custody could be granted as minimum as possible. However, in the facts and circumstances of the present case, it appears that the learned Additional Sessions Judge has taken a casual approach. That

observations made by Sessions Judge in Para-5 itself substantiate the fact that certain material information is required to be verified by interrogation of present respondent and hence I hold that impugned order passed by learned Additional Sessions Judge dated 10.2.1998 in the proceedings of Revision Application No. 25 of 1998 is required to be set aside and quashed. That in the facts and circumstances of the present case, accused should be remanded to police custody for three days commencing from 25th March, 1998 to 27th March, 1998.

9. On the basis of the above stated discussion, the petition is allowed. The impugned order passed by the learned Additional Sessions Judge dated 10.2.1998 in Revision Application No. 25 of 1998 is hereby set aside and quashed. Respondent as accused of Crime Register No. 8 of 1998 registered at Padra Police Station is remanded to police custody for the period from 25.3.1998 to 27.3.1998. The Investigating Officer shall produce the respondent on completion of the period before 5.00 p.m. in the competent Court of J.M.F.C., Padra on 27.3.1998. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

10. Shri Jitendra Makan, learned advocate appearing for the respondent has requested at this stage to stay the operation of this order in order to carry forward the order before higher forum. In the facts and circumstances of the present case, I do not find it proper to stay the operation of this order as it would amount to frustrate the object of passing such order. Hence the request made is rejected.

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p.n.nair